

CALIFORNIA COASTAL COMMISSION

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Staff Report: Appeal

Substantial Issue Determination

Application number.....A-3-MCO-03-066, McWethy

Applicant.....McWethy Management Partnership

AppellantsCommissioners Reilly and Wan

Project location.....Hurricane Point (between mile posts 58 & 59, south of Hurricane Point Overlook, between Highway 1 and the ocean), Big Sur (Monterey County) (APN 418-171-001).

Project description.....Demolition of an existing, approximately 2,225 sq. ft. one-story single family residence; construction of an approximately 3,470 sq. ft. two-story single family dwelling; and design approval.

Local approval.....The Monterey County Planning Commission approved a Combined Development Permit Resolution 03028, (PLN020189) for the project on March 28, 2003.

File documents.....Monterey County certified Local Coastal Program; Final Local Action Notice 3-MCO-03-229; documents and materials from the local record provided by Monterey County on May 20, 2003; Big Sur Coast Land Use Plan.

Staff recommendation...Substantial Issue Raised

Summary: The Applicant proposes to demolish an existing; approximately 2,225 square feet one-story single family dwelling, approximate height of 15 feet and construct an approximately 3,470 square feet two-story single-family dwelling with a maximum height of 24 feet, within the Big Sur area of Monterey County. The proposed project is within 150 feet of environmentally sensitive habitat and would involve new development in the critical viewshed that will be more visible than the existing development. The County approved the project subject to 23 conditions, finding it consistent with the Monterey County Local Coastal Program.

The appellant's contentions relate to the proposed projects inconsistency with the visual resource policies of the Monterey County LCP. The LCP visual resource policy 3.2.1 Key Policy, prohibits new development visible from the critical viewshed. In addition, the appellants contend that the project is inconsistent with Critical Viewshed Policy 3.2.3.A.7, which states that for projects involving the replacement of structures, replacements shall be encouraged to be resited out of the viewshed, but in no case shall they be more visible than the development they replace.



California Coastal Commission
August 06, 2003 Meeting in Orange County

Staff: M. Nowak Approved by:

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Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed. In particular, the appeal raises a substantial issue regarding project conformance to LCP policies that prohibits new development and replacement structures visible from the critical viewshed (Big Sur Policies 3.2.1 *Key Policy*; 3.2.3.A.7).

In order to find the project consistent with the LCP policies a finding must be made that the proposed project will not be visible from the critical viewshed. In this case, the County evaluated this project as being in the critical viewshed but found the project to be in conformity with development standards for projects within the Big Sur viewshed. Field observations by Commission staff have confirmed that the project is in the critical viewshed, which is defined by LCP policy 3.2.2 as “...everything within sight of Highway 1 and major public viewing areas including turnouts...”; as specifically described by IP section 20.145.030, development is considered to be in the critical viewshed “if any portion of the proposed development is visible from Highway 1, including pull-outs, right-of-ways, and walkways at the highways edge.” Again, staff have observed, and photo-documented at least one view from the edge of Highway 1 that shows the existing and proposed structure to be within the critical viewshed. Photos also show, based on the staking for the new residence, that the project will involve new development in the critical viewshed that will be more visible than the existing development, inconsistent with LCP policy 3.2.1, 3.2.3.A.7, and corresponding ordinances (20.145.030, (A)(1)(b), (A)(2)(f)). The County’s findings do not apply the criteria of these policies to the proposed development but rather, simply conclude that the project “will have no significant impact on the public viewshed...” The finding is based in part on proposed screening from trees and shrubs, concluding that the “visual impact is considered less than significant...” However, the LCP standard for evaluating visual impacts is “**no increase in visibility**”, not “significance” of the impact. Furthermore, the LCP is clear that visibility is to be determined by “existing conditions, regardless of landscaping or other techniques which could be later employed to screen the development” (20.145.030(A)(1)(b)). Relying on proposed screening to address visual resource impacts is not consistent with the LCP.

Therefore, staff recommends that the Commission find that a substantial issue is raised by the appellants’ contentions, and that the de novo hearing on the project be continued to a later date to allow for further evaluation of the project under the resource protection standards of the LCP.



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Exhibits

1. Vicinity Map
2. APN Map
3. Site Plan
4. Appellants' Contentions
5. County Conditions of Approval
6. Botanical Map
7. Field photographs By CCC Staff

I. Local Government Action

On March 28, 2003, the Monterey County Planning Commission approved the Combined Development Permit PLN020189 for demolition of an existing, approximately 2,225 square feet single family residence, construction of an approximately 3,470 square feet single family dwelling within the Big Sur critical viewshed and within 100 feet of environmentally sensitive habitat; and design approval. The Monterey County Board of Supervisors approved the project on May 28, 2003, subject to 23 conditions. (See Exhibit 5 for detail).

II. Summary Of Appellants' Contentions

Please see Exhibit 4 for the full text of the appeal.

The appellants, Commissioners Reilly and Wan have appealed the final action taken by the County Board of Supervisors on the basis that approval of the project is inconsistent with visual resource policies of the Monterey County Local Coastal Program that prohibits new development visible from the critical viewshed.



III. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to issue a coastal development permit. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus the additional finding will be required.

IV. Staff Recommendation On Substantial Issue

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeal was filed pursuant to Coastal Act Section 30603.

MOTION:

Staff recommends a “**NO**” vote on the following motion:

*“I move that the Commission determine that Appeal No. A-3-SLO-02-074 raises **no** substantial issue with respect to the grounds on which the appeal has been filed.”*

A majority of the Commissioners present is required to pass the motion. Failure of the motion, as recommended by staff, will result in Commission jurisdiction over the project, a *de novo* hearing on the application, and adoption of the following resolution and findings.



RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-03-066 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

The project is located at Hurricane Point (between mile posts 58 and 59, south of Hurricane Point Overlook, between Highway One and the ocean), Big Sur area of Monterey County. (See Exhibit 1). The topography of the area is varied with numerous ridges and gullies, steep slopes, and a nearly flat area where the existing house is located. The majority of the lots in the area are typically forty acres in size and therefore historic development has been relatively sparse. Other private land in the area includes several small parcels approximately five acres in size adjacent to the subject property. These smaller parcels have the Pacific Ocean at or near their western sides, with two large ranches, El Sur and Funt Ranch to the north, east, and south.

In contrast to the typically large lots of Big Sur, the project site is a 5.2-acre parcel located west of Highway One. The topography is very steep with rugged terrain and a flat area where the existing structure is located. This area of Big Sur is characterized by upland habitats of the Coast Range grassland, mixed evergreen forest, and chaparral. The sea front areas of this portion of the coastline support coastal bluff scrub, coastal sage scrub, northern coastal scrub and coastal prairie. The property is characterized predominantly of coastal sage scrub, although much of the project site is landscaped with non-native plants. The site is designated Watershed and Scenic Conservation Residential in the Monterey County Local Coastal Program. Combined designation includes Critical Viewshed area.

The County approval consists of demolition of an approximately 2,225 square feet one-story single family dwelling and construction of an approximately 3,470 square feet partial two-story single family dwelling; and approval of the design of the proposed structure. The site plan is attached as Exhibit 3. Development will disturb approximately 3,379 square feet of the parcel and is located 20 feet from the eastern property boundary. Landscape conditions require removal of exotic plants and use of native plants, and placement of a Scenic and Conservation Easement over the entire parcel exclusive of the immediate building envelope and driveway. The project is located between two seasonal streams that contain Arroyo Willow riparian forest, which are within 150 feet of the project site (Exhibit 6). The County has conditioned the project to avoid impacts to these sensitive areas. Conditions include preventing excavated material from entering either of the seasonal streams and disposing all excavated material off-site or incorporated into the project design.



B. Substantial Issue Determination

1. Visual/Scenic Resources Development Standards

a. Relevant Local Coastal Program Provisions

The LCP visual resource protection policies prohibits new development visible from the critical viewshed:

3.2.1 Key Policy

*Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to **prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed)**, and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials [emphasis added].*

This policy is implemented by IP Section 20.145.030:

Intent of Section: The intent of this Section is to provide development standards which will allow preservation of Big Sur's scenic resources and promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, all future public or private development which would be visible within the "Critical Viewshed", as defined in Section 20.145.020.V., shall be prohibited...

More specifically, for projects involving the replacement of structures, replacements shall be encouraged to be resited out of the viewshed, but in no case shall they be more visible. Critical Viewshed Policy 3.2.3.A.7 states:

*The general policy concerning replacement of structures shall be to encourage resiting or redesign in order to conform to the Key Policy. **Replacement or enlargement of existing structures**, or structures lost in fire or natural disaster **within the critical viewshed shall be permitted on the original location on the site, provided no other less visible portion of the site is acceptable to the property owner, and provided the replacement or enlargement does not increase the visibility of the structure.** Replacement or enlargement of structures outside the critical viewshed shall be permitted*



as long as such replacement or enlargement does not cause the structure to intrude into critical viewshed.

This policy is implemented by IP Section 20.145.030.A.2.f:

When a structure is to be replaced, resiting or redesign should be required as necessary in order to better conform the Intent of this section. Replacement or enlargement of existing structures, or structures lost in fire or natural disaster within the critical viewshed shall be permitted on the original location on the site, provided no other less visible portion of the site is acceptable to the property owner, and provided the replacement or enlargement does not increase the visibility of the structure...

b. County Action

The staff report indicates that the County evaluated this project as being in the critical viewshed. The applicant is required to comply with 23 conditions, which includes the planting of a continuous row of trees at the perimeter of the building envelope that will serve to screen the property from the public viewshed in the future when the existing trees die. The project has also been conditioned to replace exotic plants with native vegetation compatible with the native plant community, which is coastal sage scrub. The County accepted these conditions to address the proposed projects impact to the critical viewshed.

c. Substantial Issue Analysis

The County evaluated this project as being in the critical viewshed. Field observations by Commission staff have confirmed that the project is in the critical viewshed, which is defined by LCP policy 3.2.2 as “...everything within sight of Highway 1 and major public viewing areas including turnouts...” specifically described by IP Section 20.145.030, development is considered to be in the critical viewshed “if any portion of the proposed development is visible from Highway 1, including pull-outs, right-of-ways, and walkways at the highways edge.” Again, staff have observed, and photo-documented at least two views from the edge of Highway 1 that shows the existing and proposed structure to be within the critical viewshed (see Exhibit 7).

Photos also show, based on the staking for the new residence, that the project will involve new development in the critical viewshed that will be more visible than the existing development, inconsistent with LCP policy 3.2.1, 3.2.3.A.7, and corresponding ordinances (20.145.030, (A)(1)(b), (A)(2)(f)) (see Exhibit 7). The County’s findings do not apply the criteria of these policies but rather, conclude that the project “will have no significant impact on the public viewshed...” The finding is based in part on proposed screening from trees and shrubs, concluding that the “visual impact is considered less than significant...” However, the LCP standard for evaluating visual impacts is clearly “no increase in visibility”, not “significance” of



the impact. Furthermore, the LCP is clear that visibility is to be determined by “existing conditions, regardless of landscaping or other techniques which could be later employed to screen the development” (20.145.030(A)(1)(b)). Relying on proposed screening to address visual resource impacts is not consistent with the LCP.

d. Substantial Issue Conclusion

The appeal raises a substantial issue regarding project conformance to LCP Visual Resources Policies because the locally approved development will disrupt sensitive scenic resources within the critical viewshed. Alternatives that would avoid impacts to the Big Sur critical viewshed, and that would be consistent with the LCP requirements to not impact the viewshed, should be considered.

Therefore, a substantial issue is raised by this contention with respect to adverse impacts to the LCP critical viewshed policies.

